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LAW OFFICES

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December 7, 2004

Arizona Corporation Commission

DOCKETED

DEC 07 2004

DOCKETED BY

Jerry Smith, Engineering Division
Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

Re: Panda Gila River, L.P.
CEC Conditions – Commission Decision Nos. 62730; 62970
Docket No. L-00000Q-00-0099

Dear Mr. Smith:

This letter is a follow-up to Panda Gila River, L.P.'s ("Gila River") 2004 self-certification letter sent on February 27, 2004. In my previous correspondence, the following response was made concerning Condition No. 1 of Gila River's Certificate of Environmental Compatibility:

Condition No. 1: The Applicant and its assignees shall comply with all existing applicable air and water pollution control standards and regulations, and with all existing applicable ordinances, master plans and regulations of the State of Arizona, the County of Maricopa, the Town of Gila Bend, the United States, and any other governmental entities having jurisdiction.

Response No. 1: Gila River is complying with all existing applicable air and water pollution control standards and regulations, and with all existing applicable ordinances, master plans, and regulations of the State of Arizona, the County of Maricopa, the Town of Gila Bend, the United States, and any other governmental entity having jurisdiction. Although the Gila River Power Station ("GRPS") has recently submitted a request to amend portions of its Air Quality permit with the Maricopa County Environmental Services Department and the U.S. Environmental Protection Agency, GRPS is currently in compliance as referenced above. Please see Attachment No. 1, Air Quality Compliance Summary.

FENNEMORE CRAIG

Ernest Johnson, Director

December 7, 2004

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On October 20 and 21, 2003, the Maricopa County Environmental Services Department ("MCESD") visited the GRPS and reviewed start-up emission data and conducted opacity inspections. As a result of the inspections, MCESD issued Notices of Violations ("NOVs") alleging that GRPS exceeded opacity limits and hourly emission limits during startup. However, these alleged violations were corrected in early 2004.

As a result of MCESD's enforcement action, Gila River entered into an Order of Abatement by Consent on October 28, 2004, and agreed to pay civil penalties, without admitting the violations, for exceeding hourly emission limits set forth in Table 3 of its Title V Air Quality Operating Permit¹ during 2003. A copy of the Order of Abatement by Consent is attached hereto as **Appendix 1**. Also attached hereto as **Appendix 2** is the Notice of Satisfaction of Order of Abatement by Consent, which provides that Gila River has satisfied all the conditions set forth in the Order of Abatement by Consent.

If you have any questions concerning the above information, or need additional information, please let me know. Thank you for your time and consideration in this matter.

Sincerely,



Patrick J. Black

Attachment

cc w/attachment: Eric Bronner, Panda Gila River, L.P.
Docket Control

1613751.1/73262.005

¹ Gila River's request to amend portions of its Air Quality Operating Permit was approved by MCESD and the U.S. Environmental Protection Agency earlier this year.

APPENDIX 1

**BEFORE THE CONTROL OFFICER OF THE
MARICOPA COUNTY ENVIRONMENTAL SERVICES DEPARTMENT**

In the Matter of:)
)
Panda Gila River, LP.)
1250 E. Watermelon Rd.)
PO Box 798)
Gila Bend, Arizona 85337)
)
Respondent

ORDER OF ABATEMENT BY CONSENT

Number AS-008-04

COPY

I. NOTIFICATION

You are hereby notified that the Control Officer of the Maricopa County Environmental Services Department (hereinafter "MCESD") has reasonable cause to believe that Panda Gila River, LP (hereinafter "Gila River") operated in violation of Maricopa County Air Pollution Control Regulations (hereinafter "Regulation") adopted by the Maricopa County Board of Supervisors.

II. JURISDICTION

The Control Officer has jurisdiction over the subject matter of this action and is authorized to enter into this Order of Abatement by Consent (hereinafter "Order") pursuant to A.R.S. § 49-511 and Regulation I, Rule 110, Section 301, Violations; Order of Abatement.

III. FINDING OF VIOLATION

A. On October 20 and 21, 2003, MCESD inspected the Gila River Power Station ("GRPS") located at 1250 E. Watermelon Road, Gila Bend, Arizona 85337. During the inspection, MCESD reviewed startup emissions data and conducted opacity inspections. The opacity inspections indicated to MCESD that several of the Units exceeded the opacity limit in the Air Permit on October 20 and 21, 2003. A review of the startup data indicated to MCESD that on October 21, 2003, several of the natural gas fired turbines ("Units") exceeded the hourly emission limits set forth in Table 3 of the facility's Title V Air Quality Operating Permit, No. V99018 incorporating Significant Permit Revision SO1-007 dated August 20, 2001 (the "2001 Air Permit") (Table 4 of the facility's Air

Permit incorporating Significant Modifications S01-007 and S04-001 dated April 9, 2004 (the "2004 Air Permit").

- B. MCESD conducted subsequent reviews of additional startup and non-startup emissions data. That review indicated to MCESD that the Units exceeded the emission limits set forth in Tables 2, 3 and 4 of the facility's 2001 Air Permit (Tables 3, 4 and 5 of the facility's 2004 Air Permit) from April 2003 up through September 2004 and that certain reports were not filed on time.
- C. MCESD issued Gila River the following Notices of Violation ("NOVs") for the violations alleged in paragraphs A and B of this section: AU-11-10-03-01, AU-11-10-03-02, AU-11-10-03-04, AU-02-20-04-09, AU-08-17-04-01 through AU-08-17-04-013, AU-09-21-04-01 and AU-10-04-04-01 through AU-10-04-04-05.

IV. TERMS AND CONDITIONS

- A. MCESD agrees not to pursue criminal or civil remedies authorized by A.R.S. § 49-502 and A.R.S. § 49-513 against Gila River for any of the violations contained within the NOVs set forth in Section III.C above and any other violations under or otherwise related to the facility Air Permit, known or unknown, prior to the date of this Order. MCESD agrees not to request the United States Environmental Protection Agency (hereinafter "EPA") to overfile on any violations alleged in or covered by this Order. MCESD also agrees not to request EPA to consider any other enforcement action under EPA authority for violations alleged in or covered by this Order. In no way does this Order limit the authority of EPA to bring an action on any violations alleged in or covered by this Order.
- B. In return, and without admitting to the violations, Gila River agrees to pay to MCESD the sum of \$422,890.00 (U.S.) on or before November 19, 2004 (the "Due Date"). Payment shall be in the form of a certified or cashier's check, made payable to "Maricopa County Environmental Services Department" and shall be delivered to the following on or before the Due Date.

Robert Evans, Enforcement Manager
Maricopa County Environmental Services Department
1001 N. Central Avenue, Suite 595
Phoenix, AZ 85004-1935

MCESD and Gila River agree that this Order of Abatement by Consent prevents MCESD from pursuing enforcement action for any excess startup emissions or other violation of Gila River's Air Permit or other applicable requirements that occurred prior to the effective date of this Order.

- C. In the event that MCESD pursues legal action to enforce Gila River's payment obligation under Section IV.B of this Order, Gila River shall pay all attorneys' fees and all other expenses incurred by Maricopa County in connection with the collection proceedings.
- D. Pursuant to the provisions of Rule 110, Section 301 in the Regulation, Gila River is ordered to and agrees to comply with the provisions of its Air Permit.

V. GENERAL PROVISIONS

- A. MCESD and Gila River are the Parties to this Order.
- B. All communications with MCESD, including submittals, plans, payments, and other items arising from this Order, shall be directed to the attention of:

Robert Evans, Enforcement Manager
Maricopa County Environmental Services Department
1001 N. Central Avenue, Suite 595
Phoenix, Arizona 85004-1935

- C. If any delay or anticipated delay in meeting the terms and conditions of this Order is caused by unforeseeable circumstances beyond the control of Gila River, and cannot be overcome by due diligence, the time for performance under this Order may be extended by written amendment to this Order for a period no longer than the delay resulting from such circumstances. Gila River shall notify MCESD in writing within five (5) calendar days after the date that Gila River first knew or reasonably should have known that such circumstances may or will cause a delay or anticipated delay. Economic factors shall not be considered sufficient cause for extension of deadlines established by this Order.
- D. The Parties to this Order promise to take all actions reasonably necessary to comply with the terms, conditions, and provisions of the Order.
- E. If, after the effective date of this Order, any provision is held to be illegal, invalid or unenforceable under present or future laws effective during the duration of this Order, such provision shall be fully severable.

- F. This Order shall not be modified or amended except by written instrument signed by the Parties to this Order.
- G. The laws of the State of Arizona shall govern the validity, construction, interpretation, and administration of this Order. The Parties declare that there are no other written documents between them affecting this Order; and the Parties agree that this document is the exclusive statement of the terms and conditions of this Order.

VI. APPEAL AND EFFECTIVE DATE

Gila River hereby waives its right to appeal this Order under A.R.S. § 49-490. This Order shall be effective upon the latter date of signature by the Parties. Signature by each party on any copy of this Order shall constitute signature of the Order for determining the Effective Date.

VII. RELIEF

Gila River acknowledges that failure to comply with this Order may result in an action by MCESD for criminal or civil penalties pursuant to, but not limited to, A.R.S. § 49-502 and A.R.S. § 49-513, injunctive relief pursuant to A.R.S. § 49-512, and class 5 felony penalties for knowingly violating this Order pursuant to A.R.S. § 49-514.D.

VIII. SIGNATORIES

The undersigned representatives of MCESD and Gila River certify that they are authorized to enter into the terms and conditions of this Order and bind legally the Parties to this Order.

MARICOPA COUNTY ENVIRONMENTAL
SERVICES DEPARTMENT

Signature:

Randy Ballard

Print Name:

Randy Ballard

Title:

Enforcement Officer

Date:

10/28/04

Ratified by:

Albert F. Brown 10-28-04

Albert F. Brown, Control Officer

PANDA GILA RIVER, LP by Panda Gila River I, LLC
Its General Partner

Signature:

[Signature]

Print Name: John Duff *JD*
Title: President
Date: 10/27/2004

APPENDIX 2

